U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

[redacted]

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DATE: APR 0 2 2012 OFFICE: TEXAS SERVICE CENTER [redacted]

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Mary Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will dismiss the appeal.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an accountant. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner submits a personal statement.

Before the filing of the appeal, attorney [redacted] represented the petitioner. [redacted] prepared a response to a request for evidence (RFE), including a cover letter on [redacted] letterhead. [redacted] mailed the RFE response from his Maryland address, rather than from the petitioner's Florida address. Subsequently, however, [redacted] did not prepare or sign the Form I-290B Notice of Appeal; the petitioner's personal statement on appeal includes no mention of legal representation; and the petitioner mailed the appeal from his Florida address. Form I-290B advises that attorneys "must attach a Form G-28, Notice of Entry of Appearance as Attorney or Representative" to the appeal, as required by the U.S. Citizenship and Immigration Services (USCIS) regulation at 8 C.F.R. § 292.4(a). The appeal does not include this form. Therefore, the record contains no indication that [redacted] is still the petitioner's attorney of record, and several indications that he is not. The AAO will therefore consider the petitioner to be self-represented.

Section 203(b) of the Act states, in pertinent part:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. –
>
> > (A) In General. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer –
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's

> services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990, published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service [now USCIS] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation (*NYSDOT*), 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, the petitioner must show that the alien seeks employment in an area of substantial intrinsic merit. Next, the petitioner must show that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available United States worker having the same minimum qualifications.

While the national interest waiver hinges on prospective national benefit, the petitioner must establish that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The intention behind the term "prospective" is to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The AAO also notes that the regulation at 8 C.F.R. § 204.5(k)(2) defines "exceptional ability" as "a degree of expertise significantly above that ordinarily encountered" in a given area of endeavor. By statute, aliens of exceptional ability are generally subject to the job offer/labor certification requirement; they are not exempt by virtue of their exceptional ability. Therefore, whether a given alien seeks classification as an alien of exceptional ability, or as a member of the professions holding

an advanced degree, that alien cannot qualify for a waiver just by demonstrating a degree of expertise significantly above that ordinarily encountered in his or her field of expertise.

The petitioner filed the Form I-140 petition on April 9, 2010. The petitioner's initial submission consisted of the petitioner's résumé and documentation of his academic degrees. On his résumé, the petitioner indicated "an interest in international tax law research and compliance" and also claimed expertise in "financial statement preparation, reporting, analysis, interpretation and filing; general accounting; automated general ledger accounting systems; taxation, fixed assets, and payroll." The initial submission established that the petitioner holds an advanced degree in a professional occupation, but not that a waiver of the job offer requirement would be in the national interest.

On October 12, 2010, the director issued an RFE, instructing the petitioner to submit evidence to meet the guidelines set forth in *NYSDOT*. In response, [redacted], then the petitioner's attorney, offered a capsule discussion of *NYSDOT* and listed a number of unpublished AAO appellate decisions approving national interest waivers. [redacted] did not provide any of the facts from the cited decisions except to identify the occupations of the respective beneficiaries. [redacted] failed to explain how these unpublished decisions are relevant to the present proceeding. While the USCIS regulation at 8 C.F.R. § 103.3(c) provides that AAO precedent decisions are binding on all USCIS employees in the administration of the Act, unpublished decisions are not similarly binding. The decisions show that workers in a wide range of fields can qualify for the waiver, but the director never stated that the petitioner's occupation disqualified him for the waiver. At issue is not what the petitioner does, but the significance of what the petitioner has so far accomplished.

[redacted] stated that the petitioner's "past record justifies projections of future benefit to the national interest," but he provided no information about that "past record." He also stated: "My client's impressive educational background; evidence of recognition for achievements and significant contributions in improving health care; his statement in support of the National Interest Waiver, and third party testimony from outstanding professionals in his profession, provide the basis for the 'national interest' waiver." This general statement is not only lacking in detail, it is also demonstrably erroneous. The record contains no "third party testimonials," and the petitioner's work is unrelated to "improving health care." Elsewhere in the same statement, [redacted] stated that the petitioner "continues to play a critical role in epidemiology and research in the United States." The petitioner is an accountant, not an epidemiologist. It appears that [redacted] mistakenly inserted the petitioner's name into a letter originally prepared for another, unnamed client. Whatever the reason, [redacted] statement contains no correct references to the petitioner's occupation, and no specific discussion of how the petitioner merits a national interest waiver. The record reflects no further involvement by [redacted] in the proceeding.

The petitioner himself discussed the overall importance of tax research and tax compliance, and asserted that his "expertise [in tax compliance] . . . is not just needed; it's of vital importance to the financial health of this country." In terms of his past contributions in this area, the petitioner stated:

> In the past I have always filed my income tax [returns] on time and ensured that I remain in compliance. I have also ensured that all my clients, relatives and friends . . . do the same. . . .
>
> To help foster the importance and the need for compliance . . . my research . . . will help generate a "win-win" scenario. This means providing compelling research that helps each tax payer to see when a reporting requirement exists as well as identifying any benefit that will accrue to them as well. . . .
>
> As a student at Broward College, I tutored all levels of accounting and Economics courses on the curriculum and I always stressed the importance of tax as a source of revenue for the country.
>
> Between 2006 and 2009 I worked at [redacted] A public accounting firm, specializing in tax preparation for local and foreign clients largely comprising athletes and entertainers. The reporting laws governing these professions are very complex but I worked assiduously to ensure nothing is missed.
>
> . . . [T]he government is constantly looking for a way to fill the budget gap and raise revenue. . . . The country's best bet now is to encourage compliance, levy fines and punishment for noncompliance and put a team in place to police all involved and ensure that taxpayers pay what they are supposed to.

The intrinsic merit of accountancy and tax compliance is not in dispute. The petitioner, however, did not explain how the individual efforts of one accountant would be national in scope. Similarly, the petitioner's statement did not distinguish him from other accountants in the same specialty. There exists no blanket waiver for tax compliance accountants, and therefore emphasizing the overall importance of the occupation cannot suffice to show eligibility for the waiver.

The petitioner submitted background documentation regarding United States tax law. These materials establish that tax law can be very complex, and that it is advisable to seek professional assistance when dealing with those complexities. The materials do not, however, mention the petitioner at all, much less demonstrate that he qualifies for a special exemption from the job offer requirement that, by statute, normally applies to the immigrant classification that he chose to seek.

The director denied the petition on March 8, 2011. The director noted the petitioner's submission of information about the petitioner's specialty, and stated: "The issue in this case is not whether accounting is in the national interest, but whether the beneficiary, to a greater extent than U.S. workers having the same qualifications, plays a significant role in that field." The director found that the petitioner had not submitted any evidence about the petitioner's own impact on his field. The director particularly noted the absence of "testimonial letters from major public agencies or national organizations to vouch for the petitioner's individual importance to the 'national interest.'"

On appeal, the petitioner states that witness letters are not required to show eligibility for the national interest waiver. While this assertion is true, the petitioner has not submitted any evidence – as letters or in any other form – to show that his contributions have exceeded, and will continue to exceed, those of others in his specialty to an extent that would warrant the special benefit of a national interest waiver.

The petition rests on the assertion that tax compliance is important. That assertion is correct, but it does not mean that every accountant with expertise or training in tax compliance therefore qualifies for a national interest waiver. The job offer requirement is not limited to unimportant occupations, and nothing in the statute, regulations or case law states or implies that qualified workers in the petitioner's occupation are presumptively exempt from that requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.